

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	CUID No.	OR0072 (Lincoln City)
)		
Falcon Telecable)		
)		
Complaint Regarding)		
Cable Programming Services Tier Rates)		

ORDER

Adopted: March 19, 2002

Released: March 21, 2002

By the Acting Chief, Financial Analysis and Compliance Division, Cable Services Bureau:

1. In this Order we consider complaints concerning the rates the above-referenced operator ("Operator")¹ was charging for its cable programming services tier ("CPST") in the community referenced above. We have already issued an order ("Prior Order")² in which we found Operator's rates in effect before May 15, 1994 to be reasonable. In our Prior Order, we stated that our findings "do not in any way prejudice the reasonableness of the prices for CPS service after May 14, 1994 under our new rate regulations."³ The Commission's rules provide for a refund liability deferral period, if timely requested by an operator, beginning May 15, 1994 and ending July 14, 1994, for any overcharges resulting from Operator's calculation of a new maximum permitted rate ("MPR") on the FCC Form 1200.⁴ Operator filed a refund deferral liability letter with the Commission on June 14, 1994.⁵ While the liability period for Operator's overcharges associated with its FCC Form 1200 filing may not begin to run until July 15, 1994, Operator will incur refund liability between May 15, 1994 and July 14, 1994 for any CPST rates charged above the MPR approved by the Commission on Operator's FCC Form 393. Because, in our Prior Order, we found that Operator did not incur any refund liability based on its FCC Form 393, this Order addresses only the reasonableness of Operator's rates for the period beginning July 15, 1994.

2. Under the Communications Act,⁶ the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"),⁷ in effect at the

¹ The term "Operator" includes Operator's successors in interest.

² See In the Matter of Falcon Holding Group, Inc., DA 95-1048, 10 FCC Rcd 7944 (1995).

³ Prior Order at n. 1.

⁴ See Section 76.922(b)(6)(ii) of the Commission's rules, 47 C.F.R. § 76.922(b)(6)(ii).

⁵ See letter from Joe A. Johnson, Senior Vice President, Falcon Cable TV.

⁶ Communications Act, Section 623(c), as amended, 47 U.S.C. §543(c) (1996).

⁷ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

time the complaints were filed, required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁸ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁹

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹⁰ Cable operators may justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation, by filing FCC Form 1210.¹¹ Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹² Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹³

4. Upon review of Operator's FCC Form 1200, we accept Operator's calculated MPR of \$5.20. Because Operator's actual CPST rate of \$7.60, effective July 15, 1994 through December 31, 1994, exceeds its MPR of \$5.20, we find Operator's actual CPST rate of \$7.60, effective July 15, 1994 through December 31, 1994, to be unreasonable.¹⁴ Upon review of Operator's FCC Form 1210 covering the period April 1, 1994 through December 31, 1994, we accept Operator's calculated MPR of \$5.88. Because Operator's actual CPST rate of \$7.60 exceeds its MPR of \$5.88, we find Operator's actual CPST rate of \$7.60, effective January 1, 1995 through March 31, 1996, to be unreasonable. Upon review of Operator's FCC Form 1210 covering the period January 1, 1995 through March 31, 1996, we accept Operator's calculated MPR of \$6.76. Because Operator's actual CPST rate of \$7.60, effective April 1, 1996 through September 30, 1996, exceeds its MPR of \$6.76, we find Operator's actual CPST rate of \$7.60, effective April 1, 1996 through September 30, 1996, to be unreasonable.

5. Upon review of Operator's FCC Form 1240 for the projected period October 1, 1996 through September 30, 1997, we accept Operator's calculated MPR of \$6.55. Because Operator's actual CPST rate of \$8.48, effective October 1, 1996 through September 30, 1997, exceeds its MPR of \$6.55, we find Operator's actual CPST rate of \$8.48, effective October 1, 1996 through September 30, 1997, to be

⁸ See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

⁹ See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

¹⁰ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ These findings are based solely upon the representations of Operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein.

unreasonable. Upon review of Operator's FCC Form 1240 for the projected period October 1, 1997 through September 30, 1998, we accept Operator's calculated MPR of \$5.44. Because Operator's actual CPST rate of \$8.48, effective October 1, 1997 through September 30, 1998, exceeds its MPR of \$5.44, we find Operator's actual CPST rate of \$8.48, effective October 1, 1997 through September 30, 1998, to be unreasonable. Upon review of Operator's FCC Form 1240 for the projected period October 1, 1998 through September 30, 1999, we accept Operator's calculated MPR of \$5.20. Because Operator's actual CPST rate of \$8.60, effective October 1, 1998 through March 31, 1999, exceeds its MPR of \$5.20, we find Operator's actual CPST rate of \$8.60, effective October 1, 1998 through March 31, 1999, to be unreasonable.

6. Accordingly, IT IS ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321 that the CPST rates charged by Operator in the community referenced above, effective July 15, 1994 through March 31, 1999 ARE UNREASONABLE.

7. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the franchise area referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$5.20 per month (plus franchise fees), plus interest to the date of the refund, for the period July 15, 1994 through December 31, 1994.

8. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the franchise area referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$5.88 per month (plus franchise fees), plus interest to the date of the refund, for the period January 1, 1995 through March 31, 1996.

9. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the franchise area referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$5.44 per month (plus franchise fees), plus interest to the date of the refund, for the period July 1, 1998 through September 30, 1998.

10. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the franchise area referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$5.20 per month (plus franchise fees), plus interest to the date of the refund, for the period October 1, 1998 through March 31, 1999.

11. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated periods, and shall within 30 days of the release of this Order, file a report with the Chief, Cable Services Bureau, stating the cumulative refund amount so determined (including franchise fees), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

12. IT IS FURTHER ORDERED, pursuant to Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, that the complaints referenced herein against the CPST rates charged by Operator in the community referenced above ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen F. Costello, Acting Chief
Financial Analysis and Compliance Division
Cable Services Bureau